character, there has always been manifested a great unwillingness to admit in evidence scientific books of any sort. The reasons given for their exclusion are that there is no opportunity for cross-examination, that such evidence lacks the sanctity of an oath, and that it is heresay. These very potent objections, however, may well be held to be counterbalanced by the very theory of expert evidence itself. The whole theory of the admission of expert evidence is that the jury are not able to come to an intelligent verdict because there are involved in the issue some questions "of science and art" on which they need instruction from some persons expert in such matters. In a case where the needed instruction is on the strength of timber, or a kindred subject, the experts themselves are mere mouthpieces for the text-books and authorities furnished by various tests. The persons who have actually made the tests are often dead, and usually unobtainable, and the witnesses themselves have no personal knowledge on the subject. There is little or no question that the opinion of such witnesses is admissible, as they are engaged in an occupation calling every day for the solution of such problems. As a matter of practical necessity the courts are driven to admit the opinions of these architects, engineers, and builders. Such opinions being admissible, therefore, and being in large measure, if not entirely, based on statements in books on the subject, is it not unreasonable to admit the expert's opinion and exclude the statements on which such opinions are based? The question in such cases is a purely mechanical one, a question of fact, and thus differs from that where medical books, which may be said to deal rather with speculative opinion, are sought to be introduced. The books of mechanical tests seem more closely allied to annuity tables, life tables, almanacs, weather reports, and market reports, all of which have been held to be admissible, (*Vicksburg, etc. R. R. Co.* v. *Putnam*, 118 U. S. 545; *Munshower* v. *State*, 55 Md. 11; *Sisson* v. *Cleveland & Toledo R. R. Co.*, 14 Mich. 489), than to medical books, which have been excluded in most jurisdictions.

LIFE-TENANT A TRUSTEE FOR REMAINDER-MAN. — In the case of *Green* v. *Green*, 27 S. E. Rep. 952 (So. Car.), the Supreme Court of South Carolina has decided that where a tenant for life, who is under no obligation to insure, does insure her interest in the buildings, and they are subsequently burned, the insurance money is a fund held by her in trust, either to rebuild, or to take the interest for herself and leave the principal for the remainder-man. While the decisions upon this point are not unanimous, it would seem that the better reasoning is opposed to the view taken in this case. It is true that if there be a duty on the tenant to insure for the succeeding estate, or if without being under that duty he does so insure, and his act is subsequently ratified by the remainder-man, the money derived from the insurance must be devoted to rebuilding. *Welsh* v. *Ins. Co.*, 151 Pa. 607. To say, however, that in a case like the present there is a trust relation is a different matter. It may be questioned if the court were correct in its assumption that the relation of the tenant toward the property insured is that of a trustee. It is not denied that there are certain relations existing between the tenant and the remainder-man, such as the duty of the tenant not to suffer waste, which may be called fiduciary. These duties are, however, a part of the law of real property; they existed long before the doctrine of trusts arose;

and to attempt to base upon this common-law duty the relation of trustee and *cestui* seems hardly justifiable.

Granting, however, the assumption that the relation between the tenant and the remainder-man is, as regards the estate, that of trustee and *cestui*, it is still not clear how the conclusion reached here follows from the premise. The insurance money cannot be regarded as the product of the estate. It is simply the result of a contract made between the tenant and the insurer; and they alone are parties to it and have any interest in it. The money comes into the hands of the insured as a result of his foresight, and to reimburse him for a loss which he has suffered. To say that the fund derived from a contract made solely with reference to an interest of the tenant, — a fund, the entire amount of which will but suffice to make good the loss suffered by him in the destruction of his life interest, — is nevertheless to be held in trust for a party who was never contemplated or intended to be a beneficiary, seems to be not only an extreme extension of the doctrine of implied trusts, but a practical injustice to the tenant.

THE POWER OF THE INTERSTATE COMMMERCE COMMISSION. — The power of the Interstate Commerce Commission to regulate the rates charged by transportation companies has been the subject of many conflicting views. The matter has been vehemently debated by opponents of railroad combination, and is still under consideration in cases before the United States Supreme Court. One important question involved is whether the power conferred by the statute is limited to the regulation of existing rates, or whether it is active, and includes the right to compel railroad companies to adopt rates specified by the commission. In the case of *Cin., N. O. & T. P. R. R. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, the Court said that "if the commission . . . itself fixes a rate, that rate is prejudged by the commission to be reasonable." From this declaration an opinion started and gained ground that the commission could enforce a rate so determined. This opinion has been supported on the principle, stated in *State* v. *Fremont, C. & M. V. R. R. Co.*, 35 N. W. Rep. 118, 125 (Neb.), a case which deals with a similar commission formed under a Nebraska statute, that such a power is to be construed in relation to the end in view and the evil to be prevented. A broad construction is urged upon general grounds; in order that unjust discrimination may be effectually suppressed, it is argued as a matter of necessity that in the right to regulate rates the right to fix rates is included.

However plausible this argument in favor of a broad construction may be, — and in Nebraska it is to some extent justified by the State statute, — the Supreme Court of the United States refuses to apply the theory upon which the argument is based to the case of the Interstate Commerce Commission; and in taking this stand the court is right. The statement already quoted means no more than that when the commission has once fixed a rate, railroad companies may assume that the rate is reasonable; but from this it does not follow that the rate must be adopted by the companies, or even that a rate higher than that fixed may not be reasonable. The power of the commission, as is decided in *Interstate Commerce Commission* v. *Cin., N. O. & T. P. R. R. Co.*, 17 Sup. Ct. Rep. 896, affirmed in *Interstate Commerce Commission* v. *Alabama Midland R. R. Co.*, 18 Sup. Ct. Rep. 45, is partly executive and partly judicial, but in no respect legislative; in other words, it looks to the enforcement of